

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MARIBEL AYALA, NICOLE A. PACHECO,
DOMENICA L. O'NEILL, MICHAEL
C. ESTRADA, RICHARD A. GUZMAN,
MICHAEL K. GUEVARA, CESAR
CASTILLO, MAUMER KLLAPIJA,
JASON GONZALEZ, and CRISTIAN
SALAZAR,

Plaintiffs,

-against-

CITY OF YONKERS, New York,

Defendant.

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Plaintiffs MARIBEL AYALA, NICOLE A. PACHECO, DOMENICA L.
O'NEILL, MICHAEL C. ESTRADA, RICHARD A. GUZMAN, MICHAEL K.
GUEVARA, CESAR CASTILLO, MAUMER KLLAPIJA, JASON GONZALEZ and
CRISTIAN SALAZAR, by their attorneys Lovett & Gould, LLP, respectfully state:

NATURE OF THE ACTION

1. This is an action for declaratory and injunctive relief proximately resulting from Defendant's application to Plaintiffs of a certain provision of the Yonkers' City Code which, on its face and as applied, violates of Plaintiffs' rights as guaranteed by the First Amendment to the United States Constitution, 42 U.S.C. §1983.

ORIGINAL

07 Civ (**CIV. 8186**

COMPLAINT

FILED
U.S. DISTRICT COURT
2007 SEP 19 P 1:53
S.D. OF N.Y. W.P.

JURISDICTION

2. The Court's jurisdiction is invoked pursuant to 28 U.S.C. §§1331, 1343.

THE PARTIES

3. Plaintiffs MARIBEL AYALA, NICOLE A. PACHECO, DOMENICA L. O'NEILL, MICHAEL C. ESTRADA, RICHARD A. GUZMAN, MICHAEL K. GUEVARA, CESAR CASTILLO; MAUMER KLLAPIJA, JASON GONZALEZ and CRISTIAN SALAZAR are citizens of the United States, domiciliaries of the State of New York, and residents of the Northern Counties. At all times relevant to this complaint each Plaintiff was employed by The Guardian News, Inc., a New York domestic business corporation having its principal office for the conduct of business at 251 North Avenue, New Rochelle, New York. On a weekly basis the corporation publishes and disseminates a free newspaper known as "The Westchester Guardian" (hereinafter "Guardian"). That publication focuses on and reports about amongst other things municipal corporate corruption in the incumbent administration of the City of Yonkers.

4. Defendant CITY OF YONKERS, New York (hereinafter "City") is a municipal corporate subdivision of the State of New York duly existing by reason of and pursuant to the laws of said State.

THE FACTS

5. During the months of July and August of 2007 Plaintiffs non-disruptively distributed and/or attempted to distribute on public property in the City various editions of the Guardian - - each one of which contained editorials and/or reports critical of either the incumbent Mayor of the City and/or the City's Police Department.

6. As a result numerous police officers employed by the City charged Plaintiffs with violating Section 100-35 of the City's Code which in relevant part provides, without any time, place and/or manner limitations whatsoever:

“No person shall distribute, hand out or cast about any card, circular, pamphlet or printed matter within any park or upon any public place.”

AS AND FOR A CAUSE OF ACTION

7. Repeat and reallege as if fully set forth the allegations of fact contained in paragraphs “1” to “6”, inclusive.

8. Code Section 100-35 on its face and as applied to Plaintiffs violate their rights as guaranteed by the First Amendment to the United States Constitution, 42 U.S.C. §1983.

WHEREFORE a judgment is respectfully requested:

- a. Declaring unconstitutional on its face and as applied the referenced Code section,
- b. Permanently enjoining the City from applying, with respect to Plaintiffs' non-disruptive distribution of the Guardian within the City the subject Code section,

- c. Awarding costs and reasonable attorney's fees, and,
- d. Granting such other and further relief as to the Court seems just and proper.

Dated: White Plains, N.Y.
September 18, 2007


LOVETT & GOULD, LLP

By: _____

Jonathan Lovett (4854)

Attorneys for Plaintiff

222 Bloomingdale Road

White Plains, New York 10605

914-428-8401